

FISCAL NOTE

Rule Citation:	19A NCAC 02E .0702 Solicitation and Award of Contract 19A NCAC 02E .0703 Prequalifying to Award - Professional Services Firms	
Rule Topic:	Revision of the Requirements for Solicitation and Award of Contracts, Codification of Prequalifying to Award for Professional Services Firms	
NCDOT Division:	Department of Transportation	
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Impact Summary:	Federal government:	No
	State government:	Yes
	Local government:	No
	Private sector:	Yes
	Substantial economic impact:	No
Authority:	G.S. § 136-28.1(f); 143-64.31	
Necessity:	<p>The proposed rule revisions presented in the Appendix are necessary to comply with state requirements, clarify existing rule requirements, reorganize existing rules to improve usability, and codify existing policies.</p> <p>The NC Department of Transportation last amended the State’s professional or specialized services regulations in 2009. In 2010, the NC General Assembly enacted legislation that clarifies the requirements for codification of policies that affected any party outside an agency. New administration code is being developed to codify an existing NCDOT program. The professional or specialized services have been expanded and amended to meet the requirements and to improve the usability of the rules.</p>	
Summary:	<p>The proposed amendment to 19A NCAC 02E .0702 and adoption of 19A NCAC 02E .0703 will enable Department staff to ensure contractors are properly qualified to perform the work and save project time and resources. The NC Department of Transportation estimates the total gross economic impact of these rules (benefits plus costs) at approximately \$756,500 in the first 12-month period following the adoption of the rules, and the 5-year net present value of the net benefit is about \$1.5 million (using a 7% discount rate). The proposed rule changes will result in costs and benefits to the private sector and state government. See Table 1 below for a summary of the impacts of the proposed changes.</p>	

Table 1: Costs and Benefits to Affected Parties*

Year	2014	2015	2016	2017	2018
Costs					
DOT – Labor	131,000	137,900	144,800	152,000	159,600
Professional Services Firms - Labor	90,500	95,000	99,800	104,800	110,000
Total Cost	221,800	232,900	244,600	256,800	269,600
Benefits					
DOT – Labor	363,700	363,700	363,700	363,700	363,700
Professional Services Firms - Labor	171,000	171,000	171,000	171,000	171,000
Total Benefits	534,700	534,700	534,700	534,700	534,700
Net Benefit	312,900	301,800	290,100	277,900	265,100
NPV (5years)	1,506,763				
Total Impact (Costs + Benefits)	756,500	767,600	779,300	791,500	804,300

* All values rounded to the nearest hundred, except Net Present Value (NPV). Cost and benefit line items may not sum to total due to rounding.

Introduction and Description of Proposed Rules Changes

North Carolina General Statute § 136-28.1(f) states: “Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with the planning, design, maintenance, repair, and construction of transportation infrastructure. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitation necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.”

North Carolina General Statute § 143-64.31 (a) states: “It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a

contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.”

In 2009, the Department of Transportation updated its *Policies and Procedures for Major Professional or Specialized Services Contracts*. 19A NCAC 02E .0702 Solicitation and Award of Contract is being updated to reflect the language in the updated policy. This updated policy contains the requirement for firms to prequalify in order to perform work or services for the Department. This is based on the language in both General Statutes quoted above regarding establishing a firm’s qualifications to perform the work.

In 1982, The Department of Transportation established guidelines for prequalifying and authorizing the employment of professional or specialized firms as well as for the solicitation and award of contracts. These guidelines are to be codified in 19A NCAC 02E Section .0700 Professional or Specialized Services, as proposed in this rule change. In comparison, the Department has already codified in 19A NCAC 02D .0801 similar procedures it had established in 1981 for prequalifying prime contractors and subcontractors for projects let or advertised by the Department.

Based on the current policy, the Department prequalifies Professional Services firms on an annual basis. Every year after the first approval, firms must renew their status by undergoing a shortened review process to verify that the key personnel of their firms have not changed. If the key personnel have not changed, the firm is renewed for one additional year, barring any professional or performance issues. Every three years after the first approval, the firm must go through a full review of their qualifications to determine whether the key personnel are still qualified to perform the services the firm wishes to perform on Department contracts.

The prequalification policy that the Department proposes to adopt through rule .0703 results in additional savings during the selection process of professional services contracts. The Department currently receives approximately 600 Letters of Interest (LOI) from teams of Professional Services firms for advertised contracts each year. The prequalification process for Professional Services firms allows the Department to verify whether a firm is qualified when these LOI’s are received. The savings come by only reviewing a firm’s qualifications every three years while verifying key staff of the firm annually versus reviewing a firm’s qualifications every time the firm submits a LOI or responds to Request for Proposals (RFP). This also results in cost savings for Professional Services firms in time and materials.

Without the prequalification process, the Department would have to review every firm’s qualifications for every LOI or response to RFP submitted. Many Professional Services Firms submit multiple LOI’s in a year for different items of work (referred to as disciplines). This would result in a greater number of man-hours spent by both the Department reviewing the qualifications for every contract advertised, and for the Professional Services Firms preparing their qualifications on each contract advertised, increasing the labor cost for both. There would be a significant amount of paperwork that would have to be

created by the professional services firm and stored by the Department in the absence of the prequalification process. Furthermore, Departmental review of qualification and firm's preparation of requirement documents for each LOI or response to RFP would suspend each contract until the qualification reviews are completed that could in turn cause delays to the project schedule and ultimately delays to the traveling public.

Overview of Rule Revisions

Since the rules were last amended, the Department has been prequalifying Professional Services Firms. Therefore, the Department must revise the Professional or Specialized Services rules to align with current State requirements, as well as Departmental procedures and statutory changes. Other proposed revisions will improve the usability and clarity of the rules and reduce the regulatory burden of permit requirements, all of which are consistent with the regulatory principles outlined in Executive Order 70 and G.S. § 150B-19.1.

The proposed 19A NCAC 02E .0702 and .0703 rule revisions and fiscal note have been developed in accordance with the requirements of GS 150B. These rule revisions are simply to codify the Department's existing policy and procedures. The costs and benefits presented in this analysis reflect the impacts from the Department's existing process and will not involve any new impacts. All rule revisions and proposed new rules were developed in accordance with the findings and policy, scope and authority of the North Carolina Department of Transportation codified in General Statute 136-28.1 and 143B-350.

Assumptions and Rule Impact

This section describes the economic impact expected for various public and private entities from the proposed rule changes. The requirements under Article 9 and Article 11 of Chapter 136 of the North Carolina General Statutes serve as the baseline for all of the proposed rule changes.

To calculate the cost of labor to the Department resulting from prequalification requirements, it was assumed that the work performed by the Department would be completed by an Engineer Advanced position, with assistance from a Program Assistant V. Using data provided by the Department's Human Resources staff, the average salaries for these positions using the most current data from September 2011 are \$74,615 and \$33,983 per year, respectively. Also according to Human Resources, the cost beyond salary (insurance, retirements, etc.) is 30% of the salary for the position. Adding 30% in benefits to the average cost of an Engineer Advanced position results in total compensation of \$97,000. The labor cost per person per year for Professional Services Firms was assumed to be identical to the cost for the Department, for an amount of \$97,000.

To calculate the amount of labor in man-hours spent by the Department each year reviewing applications, several Units within the Department were contacted and asked the average number of man-hours currently spent each week reviewing initial prequalification applications. The Units solicited represent a large quantity of the work reviewed for approval within the Department. The number of man-hours per week was then extended to calculate the number of man-hours per year, which in turn

was used to compute the average hours spent by DOT staff per discipline. Since this rule revision is to codify the Department's existing process, the number of man-hours spent can be assumed to be accurate for all the Units reviewing applications for prequalification throughout the Department. Once the average number of man-hours per discipline was calculated, 10.44 hours, it was multiplied by the total number of disciplines available that Professional Services Firms can submit for approval, 333 total, to obtain a total of almost 3,500 hours DOT staff would spend on prequalification, reflected in Table 2. Note, this number assumes that all prequalification requests are initial applications or re-qualification applications. This number is adjusted to account for a shorter review process for firms that are in the second and third year of a cycle.

Table 2: Calculation of DOT Labor Hours for Prequalification

<u>DOT Unit</u>	<u>Hours/Year</u>	<u># Disciplines Reviewed</u>	<u>Hours/Discipline</u>
Construction Services	52	6	8.67
Geotechnical Unit	208	17	12.24
Transportation Mobility & Safety Division	260	25	<u>10.40</u>
Average			10.44
<u>Total Number of Disciplines</u>	<u>Hours/Discipline</u>	<u>Total Hours</u>	
333	10.44	3,477	

In addition to the hours estimated above, based on current implementation of the policy that is proposed for codification, another 1,040 hours per year would be spent by an Engineer and 676 by a Program Assistant in the Contractual Services Unit for prequalification. This labor cost reflects the time needed to administer the program throughout the DOT.

To calculate the amount of labor in man-hours spent by the Professional Services Firm each year to become prequalified, several firms were contacted and asked the average number of man-hours spent each year to become prequalified. These firms are a sample representation of the larger pool of firms that regularly perform professional services type work for the Department and the average number of hours Professional Services Firms spend per discipline was derived based on their input. This average of roughly half an hour was multiplied by the total number of disciplines for which Professional Services Firms are approved, 7081 total, to obtain more than 3,300 hours that firms spend on prequalification. This amount is reflected in Table 3. Note, this number assumes that all prequalification requests are

initial applications or re-qualification applications. This number is adjusted below to account for a shorter review process for firms that are in the second and third year of a cycle.

Table 3: Calculation of Professional Services Firm Labor Hours for Prequalification

<u>Professional Services Firm:</u>	<u>Hours/Year</u>	<u># Disciplines</u>	<u>Hours/Discipline</u>
Firm A	64	151	0.42
Firm B	60	116	<u>0.52</u>
Average:			0.47
<u>Total Number of Disciplines</u>	<u>Hours/Discipline</u>	<u>Total Hours</u>	
7,081	0.47	3,328	

Table 4 below presents the total labor costs for DOT and Professional Services Firms with the prequalification requirements.

Table 4: Labor Costs Associated with Initial Prequalification

<u>DOT</u>	<u>Hours/Year</u>	<u>Adj. Salary</u>	<u>Cost/Year*</u>
Engineer Advanced	1,040	\$97,000	\$48,500
Program Assistant V	676	\$44,177	\$14,358
<u>Other NCDOT Units</u>			
Engineer Advanced	3,477	<u>\$97,000</u>	<u>\$162,149</u>
DOT Total:			\$225,000
<u>Professional Services Firms</u>	<u>Hours/Year</u>	<u>Adj. Salary</u>	<u>Cost/Year</u>
Engineer Advanced	3,328	\$97,000	\$155,200

*Assumes a full-time employee works 2,080 hours per year. Totals rounded to nearest hundred.

As mentioned at the beginning of this analysis, the process for the prequalification of Professional Services Firms runs on a three year cycle. The first year of the cycle, firms go through the full review process to prequalify. The second and third year, as long as the key employees are still with the firm, they are reviewed using a shortened review process. The fourth year is the beginning of a new cycle and DOT treats it the same as the first year and performs a full review again. Based on staff's best judgment

and available Departmental data, this analysis assumes that the costs for the second and third year are one third the cost of the first year for both the Department and the Professional Services Firms. In addition, based on historical data, approximately one third of firms are in the beginning of the cycle in any given year. In Table 1 above, the labor totals listed are calculated using the formula presented in Table 5.

Table 5: Adjusted Labor Costs

<u>Party</u>	<u>Full Labor Cost</u>	<u>% Firms in First Year of Cycle</u>	<u>First Year Cycle Cost*</u>	<u>% Firms in Second and Third Year of Cycle</u>	<u>Second/Third Year Cycle Cost*</u>	<u>Total Adjusted Labor Cost/Year</u>
DOT	\$224,984	33%	\$75,000	67%	\$50,000	\$125,000
Professional Services Firms	\$155,203	33%	\$51,700	67%	\$34,500	\$86,200

*Costs rounded to nearest hundred.

Note this analysis does not include other possible costs related to prequalification, such as mailing costs.

As stated above, the benefit of the prequalification process is that DOT does not have to review a Professional Services Firm's qualifications and the firm does not need to prepare the relevant documentation for each discipline each time the firms submits an LOI or RFP response. According to the Professional Services Management Unit within the Department, approximately 600 Letters of Interest are submitted to the Department in a year. Each of these Letters of Interest contains an average of 10 individual disciplines under the contract for a total of 6,000 disciplines that the Department contracts out to Professional Services Firm each year.

To quantify the cost savings from having a prequalification program, staff made the following assumptions. When the Units with the Department were surveyed to determine the number of man-hours spent each week reviewing applications, it was also determined that they spend on average one man-hour reviewing each individual discipline to be approved when an application for a Professional Services Firm is submitted. This time includes the initial review, contacting the firms for additional information and reviewing the additional information once submitted. To review the qualifications for each discipline for each Letter of Interest submitted in lieu of prequalification, the Department would spend approximately 6,000 man-hours per year reviewing firm's qualifications. The number of man-hours was multiplied by the cost of labor per year (in terms of the total compensation for an Engineer Advanced position) to calculate the cost to determine a firm's qualification each time a Letter of Interest is submitted. This amount is reflected in Table 6.

Assuming the number of man-hours spent by Professional Services Firms to demonstrate qualification when submitting a Letter of Interest is the same as that needed to prequalify for a discipline, the labor

cost per discipline per year can be assumed to be the same. To qualify for contracts with the Department, Professional Services Firm would need to qualify for 6,000 disciplines each year. This number was multiplied by the number of man-hours needed per discipline and then multiplied by the cost of labor per year to calculate the cost to for Professional Services Firm to qualify for Department contracts when LOI's are submitted. This amount is reflected in Table 6.

Table 6: Cost Savings from the Prequalification Program

<u>Party</u>	<u>Hours/Discipline</u>	<u>Disciplines/Year</u>	<u>Hours/Year</u>	<u>Salary</u>	<u>Cost/Year*</u>
DOT	1	6,000	6,000	\$97,000	\$279,800
Professional Services Firms	0.47	6,000	2,820	\$97,000	\$131,500

* Assumes a full-time employee works 2,080 hours per year. Rounded to the nearest hundred.

Over the last few years, the NC General Assembly has passed legislation increasing the amount of work to be outsourced to Professional Services Firm from 50% to 65%, a 30% increase in the amount of funding being outsourced prior to the legislation. The calculations of labor in Tables 2 through 5 were made based on historical data at the 50% outsource rate. In Table 1, beginning with the 2014 calendar year, the 30% increase in outsourcing is added to both the DOT and Professional Services Firm Labor benefits that are shown in Table 6 above. The increase in outsourcing is expected to also have a 5% increase in the number of prequalified professional services firms over the next few years, and will then taper off. In Table 1, beginning with the 2014 calendar year, this increase is added to both the DOT and Professional Services Firm Labor costs that are shown in Table 5 above.

The analysis assumes that the impacts presented in Table 1 above, aside from the annual increase in prequalification costs as mentioned in the paragraph above, will remain the same for each year of the cycle since:

- Firms are not likely to seek prequalification, update their prequalification, or re-qualify unless they intend to submit an LOI or RFP response during any particular year;
- Some firms drop out of the prequalification program as new firms apply for the initial prequalification, holding the number of firms in the program constant based on historical data;
- The labor saved is dependent on the number of Letters of Interest (LOI) received in a year, which is estimated to be relatively constant based on historical data; and
- State employee labor costs are unlikely to change significantly in the upcoming years (note, this may be underestimating the firms' costs due to other assumptions made above).

APPENDIX

19A NCAC 02E .0702 is proposed for amendment as follows:

19A NCAC 02E .0702 SOLICITATION AND AWARD OF CONTRACT

(a) The department shall establish and maintain a ~~"Register of Firms"~~ "Directory of Transportation Firms" which have the necessary expertise and experience and have expressed a desire to perform for the department in professional engineering or other kinds of professional or specialized services in connection with highway transportation construction or repair. Prequalification pursuant to ~~19A NCAC 02D .0801~~ 19A NCAC 02E .0703 is ~~not~~ required for inclusion on the ~~"Register"~~ Directory or award of a contract under this Section.

(b) Upon authorization by the ~~Board~~ Secretary of Transportation for the DOT staff to use a professional/specialized firm, a Selection Committee shall be established by the branch manager consisting of at least three members from the DOT staff who are experienced in the type of services to be contracted. For contracts anticipated to exceed ~~ten~~ thirty thousand dollars ~~(\$10,000)~~ (\$30,000) solicitation for proposals will be by published advertisement. In addition, solicitation for interest may also be by direct mail to several firms selected from the ~~register.~~ Directory. North Carolina firms qualified to do the required work shall be given priority consideration. A North Carolina firm is a firm which maintains an office in North Carolina which is permanently staffed and capable of performing a majority of the work required.

(c) The firm(s) to be employed shall be selected for each project by the Selection Committee.

(d) For contracts having a total cost over ~~ten~~ thirty thousand dollars ~~(\$10,000)~~ (\$30,000) and for ~~amendments~~ supplemental agreements thereto, award shall be made by the Secretary of Transportation. ~~Board of Transportation after consultation with the Advisory Budget Commission.~~

(e) ~~Contract amendments that increase a contract cost to ten thousand dollars (\$10,000) or more require approvals as specified in Paragraph (d).~~ Supplemental agreements which increase a cost of a project to thirty thousand dollars (\$30,000) or more require approval by the Secretary.

(f) In an emergency situation, these Rules may be waived by the Secretary of Transportation or the Secretary's designee pursuant to G.S. 136-28.1(e). A qualified firm may be selected, negotiations conducted and a contract executed by the Secretary of Transportation or the Secretary's designee as required to resolve the emergency conditions.

~~(g) A noncollusion certification shall be executed by prime contractors and lower tier participants in each transaction involving public funds. Transactions which require certifications from lower tier participants are:~~

- ~~(1) Transactions between a prime contractor and a person other than for a procurement contract, for goods or services, regardless of type.~~
- ~~(2) Procurement contracts for goods and services, between a prime contractor and a person, regardless of type, expected to equal or exceed the Federal small purchase threshold fixed at 10 U.S.C. 2304(g) and U.S.C. 253(g) [currently twenty five thousand dollars (\$25,000)] under a prime contract; and~~

- ~~(3) Procurement contracts for goods or services between a prime contractor and a person, regardless of the amount under which that person will have a substantive control over the transaction. Such include, but are not limited to, bid estimators and contract managers.~~

~~The certifications for both the prime contractor and the lower tier participants shall be on a form furnished by the Department of Transportation to comply with Federal Highway Administration requirements, as published in 49 C.F.R. Part 29. The prime contractor is responsible for obtaining the certifications from the lower tier participants and is responsible for keeping them as part of the contract records.~~

History Note: Authority G.S. 136-28.1(e) and (f); 143B-350(f) and (g);

Temporary Rule Eff. June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;

Eff. August 1, 1982;

Amended Eff. _____; December 1, 2012; December 29, 1993; October 1, 1991; April 1, 1986; February 1, 1983.

19A NCAC 02E .0703 is proposed for adoption as follows:

19A NCAC 02E .0703 PREQUALIFYING TO AWARD – PROFESSIONAL SERVICES FIRMS

(a) In order to ensure that contracts awarded pursuant to G.S. 136-28.1(f) and G.S. 143-64.31 are awarded to responsible firms, prospective professional services firms shall comply with the rules set forth in this Section except as otherwise provided by law. For professional services contracts other than those specified in G.S. 136-28.1(f) and G.S. 143-64.31, specific project prequalification requirements to satisfy Paragraph (c) of this Rule shall be specified in the documents for specific project contracts.

(b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31, all prospective professional services firms shall be prequalified with the Department to ensure that they are responsible and reputable firms capable of effectively and efficiently performing the work awarded to them.

(c) The requirements of prequalification are as follows:

(1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to perform and timely complete professional services contracts in which they submit or subcontract;

(2) Applicants shall demonstrate that they have sufficient financial resources, including available equipment and qualified personnel, to adequately perform and timely complete professional services contracts in which they submit or subcontract;

(3) Applicants shall demonstrate that they have the necessary knowledge and expertise to comply with all state and federal laws relating to professional services contracts.

(e) Prospective professional services firms shall update their prequalification status annually and shall re-qualify every three years.

(f) A prequalified professional services firm must maintain compliance with the rules in this section at all times in order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31. If at any time a professional services firm fails to comply with these rules, the Department shall disqualify the professional services firm from any further contracts until he is able to demonstrate compliance with these requirements by re-qualifying.

History Note: Authority G.S. 136-28.1(e) and (f); 143-64.31; 143-B350(f) and (g);

Eff.